

Conditions of Contract for Goods and Works

PART A – GENERAL PROVISIONS

1. Definitions

- 1.1 The following definitions apply in these conditions:
Contract Price means the total price set out in the Quote.
Contractor means Westsun Solar Pty Ltd.
Customer means the Party named in the Quote.
Goods means the goods, if any, described on the Quote in the item Description.
Materials means the materials, if any, described on the Quote in the item Description.
Works means the services described on the Quote in the item Description.
- 1.2 A reference to:
“**Party**” is a reference to either the Customer or Contractor and
“**Parties**” is a reference to both of them;
“**Quote**” is a reference to the quote prepared by Us for the supply of the Goods and/or performance of the Works;
“**We**”, “**Us**”, or “**Our**”, is a reference to the Contractor; and
“**You**” or “**Your**” is a reference to the Customer.

2. Offer and making of this Contract

- 2.1 We have made You an offer to supply the Goods and/or perform the Works by providing You with the Quotation.
- 2.2 This contract is made on acceptance in writing by You of Our Quotation within the validity period specified in Our Quotation.
- 2.3 This contract consists of:
(a) the Quotation; and
(b) these conditions.
- 2.4 A written contract is required by law for any home building work. If required by law, We will provide You with a certificate of home warranty insurance before starting the Works and before demanding payment.
- 2.5 We may accept, in Our sole discretion, an electronic acceptance from You as compliance with clause 2.2.

3. Implied terms

- 3.1 Subject to clause 3.2, to the extent permitted by law, all implied warranty, terms and conditions are excluded.
- 3.2 Nothing in clause 3.1 is intended to exclude any guarantees under the Australian Consumer Law. If You are a consumer as defined in the Australian Consumer Law then:
(a) the Goods and/or the Works come with guarantees and protections that cannot be excluded under the Australian Consumer Law; and
(b) to the extent to which any provision of this contract is inconsistent with those guarantees and protections, then to the extent of inconsistency, such provisions of this contract do not apply.

4. Contract Price

- 4.1 In consideration of Us supplying the Goods and/or performing the Works, You must pay Us the Contract Price, which will be adjusted in accordance with the provisions of this contract.
- 4.2 You agree to pay Us the Contract Price in accordance with any agreed terms of payment set out in the Quotation or if no terms are set out in the Quotation, then:
(a) A 6.5% of the Contract Price deposit upon acceptance of Our Quotation;
(b) A 40% of the Contract Price progress payment upon approval by the relevant regulatory authority; and
(c) Final payment of the balance of the Contract Price upon completion.
- 4.3 You agree that the Contract Price may be adjusted by Us to reflect any changes to the cost to Us of supplying the Goods and/or performing the Works arising from:
(a) statutory charges, taxes, rates, levies or imposts which We are required to pay in relation to the supply of the Goods and/or performing the Works; or
(b) currency exchange rates.
- 4.4 The following provisions are included in this contract only if the *Home Building Contracts Act 1991 (WA)* does not apply: You agree that the Contract Price will be adjusted by Us for the rise and fall in the costs of labour and Materials incurred by Us:
(a) in supplying the Goods, if the Goods are not supplied within 3 months from the date of this contract; and/or
(b) in performing the Works, if the Works are not completed within 12 months from the date of this contract.

5. Variations

- 5.1 You may seek a quote for a variation to the Goods and/or the Works (including the Materials) by a request to Us in writing.
- 5.2 We may agree or refuse Your request for variation in Our discretion.
- 5.3 If there is a variation, We will provide You with a revised quote setting out the adjustments to the cost of the Goods and/or the Works and changes to the estimated completion date, if any.
- 5.4 On acceptance by You of the quote for variation:
(a) the Contract Price will be adjusted;
(b) the completion date, if any, will be adjusted; and
(c) the Goods and/or the Works will be varied, in accordance with the quote for variation.

6. Suitability of Goods and/or Materials

- 6.1 You must provide Us with all necessary information (including dimensions) within such adequate time that We may specify in order for Us to be able to supply the Goods by the delivery date or the Materials for the performance of the Works by the completion date.
- 6.2 You acknowledge that You have taken all due care to ensure that the Goods and/or Materials are the correct type, size, rating, standard, quality, colour, finish and meet Your requirements and specifications (including any drawings).

7. Risk and Title

- 7.1 All risk for the Goods pass to You on delivery and/or installation of the Goods.
- 7.2 All risk for the Works pass to You progressively as the Works are performed, whether or not the Works have been completed.
- 7.3 All title to the Goods and/or Works remain with Us until You have made full payment of the Contract Price and You hold the Goods and/or Works as bailee for Us until full payment has been made.
- 7.4 If this contract (or a transaction in connection with it) is or contains a security interest for the purposes of the *Personal Properties Securities Act 2009 (Cth) (PPSA)*, then You agree to do anything (including obtaining consents, executing documents and supplying information) which We may require for the purposes of:
(a) ensuring that the security interest is enforceable, perfected and otherwise effective;
(b) enabling Us to apply for any registration, complete any financial statement or give any notification in connection with the security interest;
(c) enabling Us to exercise Our rights in connection with the security interest; and/or
(d) ensuring Our security position, and rights and obligations, are not adversely affected by the PPSA.
- 7.5 Without limiting clause 7.4, You:
(a) consent to Us doing anything necessary for the purposes of affecting and maintaining a registration on the register (in any manner We consider appropriate) in relation to any security interest contemplated or constituted by this contract;
(b) agree to sign any documents and provide all assistance and information to Us required to facilitate the registration and maintenance of any security interest, including the registration of a financing statement or financing change statement; and
(c) waive the right to receive any notice under the PPSA (including notice of a verification statement) unless the giving of such notice cannot be excluded under the PPSA.
- 7.6 You undertake not to:
(a) register a financing change statement in respect of a security interest contemplated or constituted by this contract without Our prior written consent; and
(b) register, or permit to be registered, a financing statement or a financing change statement in relation to this contract or the Goods and/or the Works in favour of a third party without Our prior written consent.

8. Commissioning

Unless otherwise agreed in writing between the Parties, Our obligation in respect of commissioning the Goods and/or the Works is limited to proving conformance of the Goods and/or the Works with Your specifications as set out in the Quotation.

9. Defects

- 9.1 You must notify Us in writing of any major or material omissions or defects in the workmanship of the Works (**Defects**) which become apparent within 5 days of the performance of the Works. Defects exclude any damage caused by You or any third party.
- 9.2 We must make good at Our cost any Defects notified by you under clause 9.1.

- 9.3 To the extent permitted by law, We have no liability for Defects which arise after 5 days from the date the Works are completed or which You have failed to notified Us within the 5 day period from the date the Works are completed.

10. Insurance

- 10.1 We confirm We have current insurance cover for:
- (a) public liability and products liability insurance to cover liability to third parties for death or personal injury or damage to property;
 - (b) workers' compensation insurance to cover Our employees; and
 - (c) accident policy insurance for self employed Contractors.
- 10.2 Any insurance affected by Us in relation to the Goods and/or the Works cover Our interests only.
- 10.3 We will maintain such insurance for the Works until the earlier of the completion of the Works or the termination of this contract.
- 10.4 We will provide You with proof of currency of Our insurances on Your request.

11. Confidentiality

You must not disclose the contents of this contract or any of Our technical, operational, pricing or other commercially confidential information relating to the Goods and/or Works to any third party without Our prior written consent, which may be withheld at Our absolute discretion.

12. Intellectual Property

- 12.1 In this clause, intellectual property right means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.
- 12.2 You warrant that any designs, materials and documents provided to Us do not infringe any intellectual property rights. You will fully indemnify Us against any loss incurred by Us arising from, or in connection with, any claim by a third party against Us alleging infringement of their intellectual property rights in connection with anything You have provided to Us.
- 12.3 We own all right, title and interest, including all intellectual property rights in any material We produce under this contract upon its creation. You must not infringe Our intellectual property rights without Our prior written consent, which may be withheld at Our absolute discretion.

13. Default and Termination

- 13.1 If You breach a term of this contract, then for such period as You are in breach We may:
- (a) suspend the performance of the Works and repossess any unfixed portions of the Works not yet paid for by You; and/or
 - (b) withhold delivery of the Goods.
- 13.2 You may terminate this contract by written notice to Us if:
- (a) We are placed under administration, go into liquidation or are declared bankrupt; or
 - (b) We breach a term of this contract and We do not remedy the breach within 10 working days of being notified by You to do so;
- 13.3 We may terminate this contract by written notice to You if:
- (a) You are placed under administration, go into liquidation or are declared bankrupt; or
 - (b) You breach a term of this contract and You do not remedy the breach within 10 working days of being asked by Us to do so; or
 - (c) asbestos, contamination or other toxic substances which pose a risk to health and safety are present at the site.
- 13.4 If We terminate this contract, then in addition to any other rights and remedies:
- (a) We may repossess any unfixed or remove any fixed portions of the Works not yet paid for by You or to set off any amount due and payable by You; and/or
 - (b) We may withhold delivery of the Goods.

14. Claims and limitations of liability

- 14.1 Any claim which You may have against Us will be deemed to be waived if the claim is not made in writing within 5 working days from the date of the event giving rise to the claim.
- 14.2 We will not be liable to You in contract or in tort or otherwise for any special or indirect damages or loss of profit resulting from, or arising in connection with, this contract or the supply of the Goods (if any), or the performance of the Works (if any), including any delay, breach of contract or any negligent act or omission by Us, Our agents or Our employees.
- 14.3 Our liability to You for any loss, costs, expenses or damage arising from, or in connection with, this contract or the supply of the Goods (if any) or the performance of the Works (if any), including any delay, breach of contract or any negligent act or omission by Us,

Our agent, or Our employees, is limited to the amount equal to the Contract Price.

15. Indemnity

You must indemnify Us, Our directors, officers and employees from and against liability for all loss, damage or injury to persons or property arising directly or indirectly with this contract or in connection with the site, and which has been caused by You, Your servants, employees, agents or contractors, including for any loss suffered by any of them.

16. Breach

- 16.1 You must pay to Us all costs incurred by Us, including legal fees, on a full indemnity basis in consequence of or in connection with any default by You under this contract and in the enforcement or attempted enforcement by Us of any of Our rights or remedies in relation to any default.

17. General

- 17.1 This contract is governed by the laws of Western Australia the Parties hereby submit to the exclusive jurisdiction of Western Australia.
- 17.2 This contract constitutes the entire agreement and understanding between the Parties and supersedes any prior agreement (whether in writing or not), negotiations, discussions, understandings and agreements between the Parties in relation to the subject matter of this contract.
- 17.3 No variation, modification or waiver of any provision in this contract, nor consent to any departure by any Party from any provision, will be of any effect unless it is in writing, signed by the Parties or in the case of a waiver, by the Party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.
- 17.4 No Party can assign this contract without the prior written consent of the other Party.
- 17.5 We may enter into any subcontract in relation to this contract without Your prior consent.

PART B – GOODS

18. Delivery

- 18.1 We agree to deliver the Goods to You at the location, and at the time agreed upon by the Parties, as specified in the Quotation.
- 18.2 We will be entitled to an extension of time to the completion date, if any, if an event occurs which is outside of Our control which causes a delay to the supply of the Goods (including failure by You to provide Us with the information required under clause 6.1). We will notify You of the revised estimated completion date.

PART C – WORKS

19. Standard of Work

- 19.1 We will carry out the Works in a proper and workmanlike manner and in accordance with the plans and specifications (if any), all relevant Australian Standards and laws in force at the date of the performance of the Works, including the current edition of AS/NZS 3000 Wiring Rules and/or AS/NZS 4777.
- 19.2 We will supply the Materials which will be of suitable standard for the purpose for which they are intended. Unless otherwise specified, all Materials will be new.

20. Care of Materials

- 20.1 At any time during the performance of the Works, We may notify You that We intend to store on the site Materials and equipment required for the performance of the Works.
- 20.2 On receipt of Our notice under clause 20.1, You must designate an area for storage and must take all reasonable precautions to protect Our property from damage or theft and You agree to indemnify Us for any costs arising from the loss or damage to any of Our property stored on site under this clause.

21. Completion and Extension of Time

- 21.1 We will complete the Works with due care and skill and in accordance with the agreed Works program, if any.
- 21.2 If no Works program has been agreed and/or no completion date has been specified, then We will perform the Works at such reasonable times and within such period as is reasonable, based on ordinary working hours and a 38 hour working week for employees.
- 21.3 You may request Us to perform the Works at other times and within an accelerated period than under clause 21.2. We may agree or refuse Your request in Our discretion. If We agree to Your request, We will vary the Contract Price to include any additional costs and expenses incurred by Us in performing the Works, including any additional labour rates for Our employees.

- 21.4 We will be entitled to an extension of time to complete the Works if an event occurs which is outside of Our control which causes a delay to the completion of the Works (including acts of God, strikes, lockouts, industrial disturbances, fire). We will notify You of the revised estimated completion date, if necessary.
- 21.5 If Our performance of the Works is interrupted or delayed by:
- any act or omission by You (including failure to provide access to the site or failure by You to provide Us with the information required under clause 6.1);
 - inclement weather resulting in employees being unable to work a full 38 hours per week; or
 - any dispute or threatened proceedings by Your neighbours), then:
- You are not entitled to defer payment of progress claims, We may charge You a delay fee equivalent of 1.5% of the Contract Price for the cost of any delay to Us and We will vary the Contract Price to include any additional costs and expenses incurred by Us arising from, or in connection with, the delay.
- 22. Site Conditions**
- 22.1 If We encounter conditions or issues in relation to the site which We were not aware of at the time of this contract, We may:
- vary the Contract Price to include any additional costs and expenses incurred by us to address the conditions or issues; or
 - suspend the performance of the Works until You have adequately addressed the conditions or issues.
- 22.2 Site conditions include any underground cables, conduits or any other objects, roof conditions, structural soundness and ease of access within the site including the roof space, not reasonably foreseen or disclosed to Us by You.
- 22.3 If You have informed Us prior to the commencement of the Works of the presence and actual location of underground services on the site, then We will make good at Our cost any damage caused by Us to the underground services.
- 22.4 If You have not informed Us under clause 22.3, then We will have no liability for any damage caused by Us to any underground services and We will vary the Contract Price to include any additional costs and expenses incurred by Us in relation to any damage to the underground services.
- 22.5 If asbestos, contamination or any other toxic substance which are a risk to health and safety are present on the site, then We may elect to:
- address the presence of asbestos, contamination or toxic substance under clause 22.1; or
 - terminate this contract under clause 13.3.
- 23. Excavations**
- 23.1 Any excavation required for the Works will be done by Us by machinery, subject to clause 23.2.
- 23.2 If We cannot have access to use machinery or if You request Us to excavate by hand, then We will vary the Contract Price to include any additional costs and expenses incurred by Us.
- 24. Access and Safety**
- 24.1 You must provide Us access to carry out the Works during working hours.
- 24.2 You must remove any items on the site including furniture and personal goods to ensure there is clear and safe access for Us to perform the Works and to protect Your property from damage.
- 24.3 You must ensure that at all times during the performance of the Works, the site complies with all legislation, including the *Occupational Safety and Health Act 1984 (WA)*. We will vary the Contract Price to include any additional costs and expenses incurred by Us if We need to take any action to ensure that the site complies with all legislation required during the performance of the Works.
- 24.4 If, due to operational requirement, We are required to perform Works at times other than between the hours of 0700 and 1900 Monday to Friday inclusive, We may vary the Contract Price to reflect changes to the cost of performing the Works pursuant to clause 5.3.
- 25. Authority Charges**
- You must pay, or reimburse Us, for any costs or charges due to any statutory authority incurred in relation to the Works.
- 26. Unsafe Wiring or Equipment**
- 26.1 You acknowledge that pursuant to legislative requirements, if We encounter unsafe wiring or equipment (**Incident**) We must not permit the unsafe wiring or equipment to be connected or to remain connected to an electrical installation or supply of electricity and We are legally required to repair or isolate the Incident and report the Incident.
- 26.2 If We encounter an Incident, then We may elect to:
- isolate the affected circuit; or
 - perform such additional works necessary to ensure compliance with all legislative requirements,
- and in either case, We will vary the Contract Price to include any additional costs and expenses incurred by Us in relation to the Incident.
- 26.3 You acknowledge that depending on the risks posed by the Incident, We will use Our reasonable endeavours to consult You prior to making an election under clause 26.2.
- 27. Making Good Damage to Property**
- 27.1 The Works do not include making good any damage caused by Us to Your property, including any damage to finished surfaces, ceiling, tiles, panels, face brickwork, walls and rendered surfaces. You are responsible for making good any damage to Your property.
- 27.2 Clause 27.1 does not apply where:
- You are a consumer under the Australian Consumer Law; and
 - We have failed to use due care and skill.
- 28. Cleaning Up**
- On completion, We will remove from the site all plant and equipment and rubbish relating to the Works. All demolished and surplus Materials are Our property unless otherwise agreed with You.
- 29. Payment Terms, Retention and Set-Off**
- 29.1 Payment shall be made to the Contractor by the Customer upon the Contractor submitting an invoice and/or upon the completion of the Works, unless otherwise agreed in writing by the Parties.
- 29.2 The Contractor will be entitled to submit progress claim invoices to the Customer as per clause 4.2, or at any other time in the Contractor's sole discretion, as and when the Contractor has performed any of its obligations over that period.
- 29.3 The Customer is not entitled to set off any amounts owing or due to the Customer by the Contractor against any amounts owing or due to the Contractor.
- 30. Head Contract**
- If the Works form part of a Head Contract, then the terms and conditions contained within this Contract shall prevail where there is any inconsistency between these terms and those of the Head Contract.
- 31. Dispute Resolution**
- 31.1 In the event of any dispute or difference arising between the Contractor and the Customer whether during the progress of the Works or after completion, termination, determination, abandonment or breach of this Contract as to the construction of this Contract or any matter or thing whatsoever nature arising under, out of or in connection with the Contract, then each Party may give to the other notice in writing of such dispute or difference giving particulars thereof and unless the same shall be settled within seven (7) calendar days after receipt of such notice then such dispute or difference shall be and is hereby referred to arbitration of the person nominated by the president for the time being of the Electrical Contractors' Association of WA.
- 31.2 Each Party may be represented by a solicitor or other legal representative in any arbitration proceedings
- 31.3 Any award made by the arbitrator shall be final and binding on the both Parties. Any claim for damages shall be limited to the Contract Price and neither Party shall be entitled to commence or maintain any action upon the dispute or difference until the matter has been referred and determined in accordance with this clause.
- 31.4 Should either Party be dissatisfied with the determination of the appointed arbitrator, the Parties agree that the extent of any further legal recourse is limited to the amount of relief awarded by the arbitrator and the costs of the arbitration.
- 32. Express Exclusions**
- 32.1 Unless otherwise stated, this Quotation does not include:
- Any structural alterations or painting to building;
 - Any alterations to the Customer's and/or Customer approved Contractor design or specifications necessary to satisfy requirements of local government authorities;
 - Responsibility for extra work necessary, which becomes apparent after demolition or removal of existing work;
 - Any work on, associated with or connected to a live installation;
 - Permits, consents or other approvals required for completion of the Works;
 - Costs of delivery, transport, freight, storage, packaging and incidental insurance; and
 - Timing of work outside of 7.00am to 7.00pm Monday to Friday.